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SUBJECT <b>AIR INTELLIGENCE INFORMATION REPORT</b>			
(Unclassified) <b>SOVIET CLAIMS IN THE ARCTIC</b>			
AREA REPORTED ON <b>Russia</b>		FROM (Agency) <b>AFOIN - 1A1</b>	
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DATE OF INFORMATION <b>1926-1954</b>			
PROB <b>2C5-AFOIN</b>		SOURCE <b>Russian, French, German, and American open source material</b>	
REFERENCES (Original number, derivative, previous report, etc., as applicable)			

SUMMARY: (Under concise summary of report. Give significance in final one-paragraph paragraph. List indicators at lower left. Begin text of report on AF Form 112-Part 112)

1. Forwarded herewith is a report on **SOVIET CLAIMS IN THE ARCTIC**. It gives an account of the grounds on which the claims are based, as well as brings evidence for the rejection of these claims.
2. The topic of this report has been briefly dealt with in the report on the Soviet Air Legislation (1A1 - 365 - 53 AF601219) submitted on 21 October 1953.
3. An Appendix and a Bibliography of sources are attached.

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## AIR INTELLIGENCE INFORMATION REPORT

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### SOVIET CLAIMS IN THE ARCTIC

In the report 1A1-365-53 (AF601219) of 21 October 1953, we have stressed the importance of the Soviet Decree of 15 April 1926 defining USSR claims in the Arctic.<sup>1</sup>

These claims were based on the so-called "sector theory" at that time and established Soviet sovereignty over "lands and islands" in the limits of the sector described in the Decree.

However, Soviet international specialists have undertaken to set these claims on a more solid foundation. They tried to prove that the Arctic Seas -- the Kara, Laptev, East-Siberian and Chuckchee -- are "closed seas" (mare clausum) and thus under exclusive Soviet sovereignty (with the exception of a part of the Chuckchee Sea).

On grounds of the sector and closed seas theories, the Soviet Union claims unrestricted sovereignty not only over all "lands and islands" already discovered, but also over those which will be discovered and which lie between the 32°4'35"E and 168°49'30"W and also over the waters included in the sector and the airspace above the sector, since the sovereignty over the airspace above the lands and closed seas belongs to the nation which owns them.

Thus, the Soviet Union assumes unlimited sovereignty over the airspace above the triangle formed by the two meridians of longitude mentioned above, and the northern coast line of the Soviet Union, with its apex at the Pole. According to these claims, Article 8 of the Air Code of the Soviet Union contains the provision that "a special air fleet has been put at the disposal of the Chief Administration of the Northern Sea Route, attached to the USSR Council of People's Commissars, for the mastering of the Arctic, and the rayons of the Far North of the USSR."<sup>2</sup>

In consequence of the alleged unlimited sovereignty over the air above the sector, the Soviet Union could prohibit the passage of foreign planes at any time. In doing so, the Soviet Union would not be limited by international air agreements since the Soviet Union is not a signatory either to the International Convention of Paris (1920) or Chicago (1944).

This report intends to bring evidence for the rejection of Soviet claims in the Arctic.

<sup>1</sup>See Appendix to the report of 21 October 1953.

<sup>2</sup>Vozdushnyy kodeks SSSR (Air Code of the USSR), 1935, Article 8.

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**I. The "Sector Theory"**

The suggestion to partition the Arctic into sectors originated in Canada, where Senator Poirier moved on 20 February 1907 that "in future partition of northern lands, a country whose possession today goes up to the Arctic regions, will have a right, or should have a right, or has a right, to all the lands that are to be found on the waters between a line extending from its eastern extremity north and another line extending from its western extremity north. All the land between the two lines up to the North Pole should belong and do belong to the country whose territory abuts up there."<sup>3</sup>

The Senator demanded that according to this principle Canada should declare as her own all the lands and islands situated to the north of her coastal line up to the Pole.

The Canadian Senate did not adopt Poirier's viewpoint. However, 17 years later the Soviets picked up this suggestion and first established her claims in a statement of 4 November 1924, of the Peoples' Commissariat of Foreign Affairs of the RSFSR with regard to the northern continuation of the Siberian tableland, and then in the limits of the Decree of 15 April 1926.

The Soviet Union is the only power which did incorporate the sector theory into a legislative act and made it the law of the country.

On 31 July 1928 a special commission was established for the working out of an organizational and financial five-year plan dedicated to the research work in the sector possessions of the USSR, as defined in the Decree of 15 April 1926, and attached to the Council of USSR Peoples' Commissars.<sup>4</sup>

After the Soviets took this important step, Soviet writers began to look for grounds on which the Soviet plans could be more steadily anchored. To this effect, first of all, the tripartite requirement established by international law for the effective acquisition of new territories, - discovery, notification and effective occupation - had to be proved inapplicable for the Arctic. This was undertaken by Lakhtin, the foremost Soviet specialist on Arctic affairs. He argued that not a single state can complete the occupation even of those Arctic islands which are adjacent to its coast in a more effective manner than through establishment of small points and periodic patrols. But even such a form of occupation can be carried out, according to Lakhtin, by adjacent lateral states only, and by no means is it open to non-Polar states which can have no reasonable interests in the Arctic.

<sup>3</sup>Debates of the Senate of the Dominion of Canada, 1906-1907, p.266.  
<sup>4</sup>USSR Collection of Laws, 1928, p. 464.

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<p>Lakhtin's contention that effective occupation is impossible in the Arctic, is refuted by facts. Many states have carried out effective occupation of Arctic territories. Thus Denmark has established control and administration of parts of Greenland; Norway is in effective possession of the Jan-Mayen Islands; Canada exercises real sovereignty over certain parts of the Archipelago to the north of septentrional coast and the USSR herself has effective control over several islands in the Arctic. If a territory anywhere, in the Arctic or not, cannot be occupied effectively, it must remain "res nullius" (no man's property), and difficulties of effective occupation in the Arctic cannot serve as grounds to disregard the requirements established by international law<sup>5</sup> and accepted by all nations.<sup>6</sup></p> <p>The sector theory is also based on the so-called principle of contiguity, according to which sovereignty over a territory confers the right (or at least a privileged claim) to the possession of nobody's land which is in geographical propinquity to the territory under sovereignty.</p> <p>There is no doubt, however, that this principle is rejected by an overwhelming majority of international lawyers, as well as by arbitration practice.<sup>7</sup></p> <p>From numerous decisions on this topic, let us mention the decision of the Permanent Court of Arbitration in the case of the Island of Palmas (U.S. vs. the Netherlands). In this case, arbitrator Huber declared: "The title of contiguity as basis for sovereignty has no ground in International Law."<sup>8</sup></p> <p><sup>5</sup>The International Law of "discovery, notification, and effective occupation" was established in the Conference of Berlin in 1884-1885, concerning the Congo. Russia was a signatory to this agreement of 1885.</p> <p><sup>6</sup>See Gustav Smedal, "De l'acquisition de souverainete sur les territoires polaires," Translated from Norwegian by Pierre Rokseth Paris, 1932, p. 92-93.</p> <p><sup>7</sup>For a list of eminent international law specialists repudiating the propinquity principle, see Böhmert in "Die Freiheit der Luftfahrt im Luftraum über dem nördlichen Polarmeer," Archiv für Luftrecht, Vol. VIII, 1938, page 273-footnote 65.</p> <p><sup>8</sup>"Permanent Court of Arbitration," Arbitral Award of 4 April 1928, between the U.S. and the Netherlands, relating to the arbitration of differences respecting sovereignty over the Island of Palmas, p. 60.</p> <p>WARNING: This document contains information affecting the national defense of the United States within the meaning of the Espionage Laws, Title 18, U.S.C., Sections 793 and 794. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law. It may not be reproduced in whole or in part, by other than United States Air Force Agencies, except by permission of the Director of Intelligence, USAF.</p>		

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The sector principle, advanced by the Soviets, uses the contiguity principle in a peculiar manner: namely, only in one northern direction. The other three directions are not considered, otherwise Norway would have more propinquity rights to the Franz Josef Archipelago on grounds of possession of Greenland, than the Soviet Union, which occupied these islands). Thus, the sector principle requires a limitation of the contiguity principle, which makes the latter even more worthless, since it cannot be legally explained why contiguity should work in a northern but not in western, eastern or southern directions.

Furthermore, Lakhtin argues that it is very practical to apply the sector principle in the Arctic on two grounds: only the Arctic states have the necessary experience with regard to the work there and no other satisfactory method for the partitioning of the Arctic exists.

The invalidity of both arguments is evident: some states which have no claims to Arctic sectors (France, Germany, the Netherlands) have been prominently active in the exploration of the Polar regions and have gathered enough experience there. The Franz Josef Archipelago was discovered by Austrians; Americans, Englishmen, Dutchmen, Norwegians and Swedes have taken part in the discovery of the Russian Arctic, along with the Russians themselves. The partitioning of Arctic regions has been carried out many times without the help of the sector theory. For instance, the sector theory was ignored by the Permanent Court of International Justice in the case concerning sovereignty over Greenland (Denmark vs. Norway).<sup>9</sup>

Thus the sector theory, which is not mentioned in the decision, was not necessary to allocate an Arctic island to a state.

For the Soviets, the practicability of the sector theory, also invoked by Lakhtin, becomes very clear when one considers that the Soviet sector would be 159° wide, whereas the U.S. sector would be only 28°, the Norwegian 21° and the Canadian 81° wide.

It is very possible that a state lacking the advantage of an Arctic shore would like to exercise sovereignty over an island in the Arctic, acquired in due course because of economic and scientific reasons. Would it be just to exclude such a state from possession in the Arctic? Lakhtin does not hesitate to give an affirmative answer to this question by bringing forward the argument that such a state does not deserve an Arctic possession since its interests in the Arctic must have "an imperialistic character and thus cannot be recognized as well founded."<sup>10</sup> Lakhtin, in the English version of his work, writes: "In the event that a foreign power [foreign in the sense to the Arctic] acquires political interests in the regions, such interests

<sup>9</sup>"Permanent Court of International Justice", Series A/B, Fasc. No. 53; see also Taracouzio, "Soviets in the Arctic," New York, 1938, p. 324.

<sup>10</sup>Snedgl, op. cit., p. 94.

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could, by no means, be recognized as reasonable and no effective occupation, however fully reached, could be regarded as lawful."<sup>11</sup>

Having unilaterally discarded the requirements of International Law with regard to discovery, notification and effective possession, the Soviet Law of 15 April 1926 and Soviet lawyers declared that undiscovered land in the Arctic sector also belongs to the Soviet Union.

Breitfuss, another Soviet Arctic specialist, supports the sector theory on the peculiar ground that it is better for all if only a small number of states are sovereign over the Arctic.<sup>12</sup>

The scholarly value of such an assertion is evident. Breitfuss fails to say who will decide what nations should be admitted and what nations should be eliminated from the Arctic. But if his theory is accepted, one could think that "it would be better for all" if the Soviet Union were excluded from the Arctic.

Professor Korovin, another supporter of the sector theory, has, however, objections against the wording of the Decree of 15 April 1926. The Decree states that the Soviet Union assumes sovereignty over "all lands and islands" already discovered as well as those which are to be discovered in the Soviet sector, and nothing is said about seas, ice formations and airspace. Korovin writes: "if.....the expediency and timeliness of the promulgation of the April Decree (Decree of 15 April 1926) is beyond doubt, it is regrettable that the same cannot be said about the wording of the Decree". The Decree of the Soviet Tark defines in words clear enough Soviet rights to "polar lands and islands." However, the unanimous testimony of explorers (see, for instance, Perry's notes) is that this form of territorial formation is the least characteristic for the Arctic Basin. Does this mean that Soviet rights are limited to lands and scattered islands and that the rest of the Arctic with its floating and stationary ice formations, lakes, straits, etc., are kindly left by the Soviet government for the free exploitation by capitalists? Evidently not, since such a conclusion would be undoubtedly in contradiction with the spirit of the Decree. That is why the Decree will be analyzed in a broad sense; supposing, for instance, that according to the intentions of the legislator the notion of "lands and islands" includes ice blocks "and the water washing them." And Professor Korovin adds somewhat melancholically: "regardless of the indisputability of such interpretation, it would be much better if the text of the Law itself relieved Soviet jurists of this work."<sup>13</sup>

<sup>11</sup> Lakhtin, "Rights Over the Arctic," "The American Journal of International Law," 1930, No. 4, p. 710.

<sup>12</sup> Breitfuss, "O razgraniichenii severnoy polyarnoy oblasti" (On Delimitation of the Arctic Area), Morskoy -- Sbornik, 1927, No. 1, pp. 10-11;

<sup>13</sup> Korovin, "SSSR i polyarnyye zemli" (The USSR and Arctic Lands); "Sovetskoye Pravo" (Soviet Law), 1926, No. 3, p. 46.

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Indeed, from the contemporary Soviet viewpoint the Decree of 15 April 1926 was incomplete. It referred to lands and islands only and did not even mention ice formations, water and airspace. Thus the Soviet legal scholars undertook the work to find new reasons in support of Soviet claims in the Arctic.

II. Closed Seas

Soviet legal literature attempts to prove that the Arctic seas are closed seas, and consequently under the sovereignty of the Soviet Union.

Let us see what has been presented by Soviet writers on this subject. Four Arctic seas wash Soviet shores: the Kara, Laptev, East-Siberian and Chuckchee.

S. A. Vyshnepol'skiy, in his article <sup>14</sup> asserts that all four Arctic seas are not open seas but special seas (sui generis) for the following reasons: Firstly, navigation on these seas is impossible without an icebreaker, aviation, and other technical help provided by the shore state. Secondly, ships in the Arctic seas are exposed to great danger because of shifts of pack ice. Thirdly, the possibility of long lasting forced sojourn of ships in the Arctic ice raises the question of the security and defense of the shore state. "It is easy to imagine," writes Vyshnepol'skiy, "what a disturbance in the normal administration and political work of the shore state is produced by a ship of another power which is locked by ice at the shore of the shore state."<sup>15</sup>

All these particularities of navigation in the Arctic seas make the existing provisions of international law for open seas and territorial waters, as well as the general legal regime of seas worked out in the Hague, inapplicable to Arctic seas, according to Vyshnepol'skiy.<sup>16</sup>

Another argument which Vyshnepol'skiy uses for the assertion that the Northern Sea Route is an "historically developed national sea route created by the stubborn work of the Russian people,"<sup>17</sup> is the statement of Soviet geographical scientists that the Siberian seas are of a gulf-type, located outside the international sea traffic. Vyshnepol'skiy is thus of the opinion that the Arctic seas do not differ in any way from seas such as the White Sea or the Sea of Azov, which are

<sup>14</sup> Vyshnepol'skiy, "K probleme pravovogo reshima arkticheskoy oblasti" (On the Problem of the Legal Status of the Arctic), "Sovetskoye Gosudarstvo i Pravo" (Soviet State and Law), 1952, No. 7, p. 40 ff.

<sup>15</sup> Ibid, p. 40-41.

<sup>16</sup> Vyshnepol'skiy has in mind the International Conference for the Codification of the Law of Nations of 1930.

<sup>17</sup> Vyshnepol'skiy, op. cit. p. 41.

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internationally acknowledged as Soviet internal seas.<sup>18</sup>

In support of this assertion, Vyshnepol'skiy analyzes the legal position of the Kara Sea. He quotes historical data in order to prove that Russia considered the Kara Sea as in her possession already in the 16th century, and had regulated navigation on this sea.

It is true that regulations concerning navigation on the Kara Sea have been issued by the Tsarist government in 1833 and 1864, but they were never accepted by other nations.

Continuous and unobjected custom is the legal ground for the claim of possession of the Kara Sea by the Soviet Union, according to Vyshnepol'skiy.<sup>19</sup>

Having adopted this viewpoint with regard to the Kara Sea, Vyshnepol'skiy does not bother with the analysis of the legal position of the remaining Arctic seas but simply jumps to the conclusion that "on ground of the considerations mentioned above: the Kara, Laptev, East-Siberian and Chuckchee Seas (the latter in its part pertaining to the Soviet sector) must be acknowledged as our national waters, closed seas, the legal regime of which must be determined by virtue of the recognition of USSR sovereignty over these seas."<sup>20</sup>

That Vyshnepol'skiy's viewpoint is shared by other Soviet writers and corresponds to the official version follows from the article in the second edition of the Bol'shaya Sovetskaya Entsiklopediya (The Great Soviet Encyclopedia) which states that the practice of regarding the gulf-type Siberian seas -- the Kara, Laptev, East-Siberian and Chuckchee -- as historical Russian seas, has been established in Soviet science.<sup>21</sup>

Indeed, Soviet Arctic specialists tried hard during the 28 years which passed after the promulgation of the Decree of 15 April 1926 to lay a scientific foundation under the Law. Lakhtin writes: "When taking into account....the popularity of the Arctic Ocean and the legal status of the adjacent territory and ice, we must conclude that the doctrine of the high seas mare liberum if applied to the Arctic Ocean, is quite unsatisfactory. Sovereignty should attach to the Polar state over the Arctic Ocean within the sectors of attraction....Thus, the proposed legal status for the high seas of the Arctic is, in its essential

<sup>18</sup>Ibid, p. 43.

<sup>19</sup>Ibid, p. 45.

<sup>20</sup>Ibid

<sup>21</sup>Volume III, p. 32.

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part, nearly identical with that of territorial waters."<sup>22</sup>

Korovin and Breitfuss<sup>23</sup> are also of the opinion that the Soviet Arctic seas are under unrestricted sovereignty of the Soviets.

That the opinion of Soviet writers corresponds to the official viewpoint may be seen in an article in the "Krasnaya Zvezda" (Red Star), organ of the Peoples' Commissariat of Defense, of 22 May 1937. The article stresses that the expedition of Professor Schmidt to the North Pole, aimed at the continuous occupation of the Pole and marked the taking into possession of the Pole territory. Also "Pravda" wrote on 20 May 1937: "The Bolsheviks have conquered the North firmly and in earnest." The Moskva correspondent of "Le Temps" remarked on this occasion: "With regard to the political and territorial apportionment of the Arctic world, the USSR has not lost a single opportunity to assert sovereignty rights in the geographical sector within her meridian borders."<sup>24</sup>

Vyshnepol'skiy's attempt to prove that the Kara Sea is a closed sea is unsuccessful. A glance on the map reveals the fallacy of his assertion. It is evident that a comparison between the Kara and Azov seas is geographically impossible. The Kara Sea is not a land-locked sea, like the sea of Azov. The latter has only one narrow outlet -- the Kerch' Strait<sup>25</sup> -- to the Black Sea. The Kara Sea is a large arm or outlet of the Arctic Ocean. It differs from an "historical bay" also with regard to its dimension. In the Cape Horn Pigeon arbitration case (1902) between Russia and the United States, Russia asserted that the Okhotsk Sea is a closed sea. The United States contended that "its vast extent precludes the possibility of the effective occupation and control by a single nation."<sup>26</sup>

It is significant that Vyshnepol'skiy tries to bring home arguments with regard to the Kara Sea only, which present to him some, though not well founded, possibilities, for the defense of his viewpoint, and then he simply extends his arguments to the remaining seas, without analyzing their geographical position individually. He writes: "According to the reasons mentioned above, the Arctic seas: the Kara, Laptev, East-Siberian, and Chuckchee (the latter in the limits of the Soviet Arctic sector)

<sup>22</sup>Lakhtin, op. cit., p. 713.

<sup>23</sup>Breitfuss, "Die territoriale Sektoreneinteilung der Arktis im Zusammenhang mit dem zu erwartenden transarktischen Luftverkehr" (Petermanns geographische Mitteilungen, No. 74, 1928, pp. 23-28).

<sup>24</sup>"Le Temps," 24 May 1937, p. 1.

<sup>25</sup>The Kerch' Strait is from 3 to 15 km wide and 40 km long.

<sup>26</sup>Foreign Relation of the United States, Annex 1, 1902, pp. 17-18. With regard to Fundy Bay, it was said in an arbitration case between Great Britain and the U.S. that the bay has a great body of water over which no nation can have the right to assume sovereignty. 1. Moore, "International Arbitration, IV, p. 4344; Bohmert, op. cit., p. 258.

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must be regarded as our national waters, closed seas, the legal regime of which must be determined in virtue of the recognition of the sovereignty of the USSR over the seas." (27)

Vyshnepol'skiy thus fails to supply even tenuous reasons for his claims to the last three seas. He urges opposition to all attempts of imperialistic powers to question the validity of the sector principle, (primarily the USA) and defends Soviet sovereignty over her Arctic possessions, including the Arctic seas.

V. N. Durdenevskiy, the noted Soviet Professor of International Law, is more cautious. He asserts only that in Soviet scientific circles near to the Arctic Institute and Glavsevmorput' (Chief Administration of the Northern Sea Route), the viewpoint is supported according to which the Kara, Laptev, East-Siberian and Chuckchee seas are gulf-type seas, and historically Russian. "This viewpoint" adds Professor Durdenevskiy "is supported by historic precedents and the tremendous work of Russian navigators in the exploration and navigation of these seas." (28)

The arbitrary fixing of Soviet sea borders, started with the Decree of 15 April 1926 for the Arctic, was continued with regard to other seas. So Kozhevnikov, ignoring the Montreux Convention of 1936, declared the Black Sea as "mare clausum." (29)

S. V. Molodtsov, in his doctoral dissertation of 1950, asserted that "the Baltic shore powers have the right, in interest of their security, to close the Baltic Sea to men-of-war of non-Baltic states, as well as the exclusive rights of Baltic Sea powers, to regulate navigation in the Baltic states, and to insure its functioning and defense." (30) He concludes that the fundamental principle of international and legal regime of the Baltic Straits must be their effective closure for men-of-war of non-Baltic states. (31)

Kozhevnikov's and Molodtsov's assertions have been adopted by Soviet international law specialists, and in the textbook of

27 Vyshnepol'skiy, op. cit., p. 45.

28 V. N. Durdenevskiy, "Problema pravovogo regima pripolyarnykh oblastey" (The Problem of the Legal Regime of the Arctic Regions), "Vestnik Moskovskogo Universiteta" (Herald of the Moskva University), 1950, No. 7, pp. 111-114.

29 Kozhevnikov, F. I., "Sovetskoye gosudarstvo i mezhdunarodnoye pravo" (Soviet State and International Law), Moskva, 1948, pp. 210-211.

30 Molodtsov, S. V., "Mezhdunarodno-pravovoy regim Baltiyskikh proliyov" (The International and Legal Regime of the Baltic Straits), "Sovetskoye gosudarstvo i pravo" (Soviet State and Law), 1950, No. 5, p. 62.

31 Molodtsov, op. cit., p. 62.

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international law published in 1951, we find the very significant sentence that "the Black and the Baltic seas must be considered as closed seas." (32)

In this connection, Professor Hazard of Columbia University remarks: "Coupled with other steps to push forward international legal protection of USSR frontiers on all shores, except the Pacific, the attitude taken on the Baltic and Black seas becomes part of a pattern; it may be interpreted as an effort to fix a line over which no power could sail its war ships without subjecting itself to the charge that it has violated international law." (33)

The position of Lakhtin, Korovin and other Soviet experts about the sovereignty over the entire land and water areas, as well as the airspace above the Soviet sector, has an official character: although the Kremlin government never came out in support of a position beyond the terms of the Law of 15 April 1926, the Soviet government never did repudiate the assertions of their scientists. In political questions, Soviet experts express the opinion of their government. If, occasionally, such opinions do not coincide with the "general line", the experts are quickly rebuffed and called to order. The fact that Lakhtin and other Arctic specialists were never contradicted by their government is ample evidence for the orthodoxy of their opinions.

The attempted settlement of the Pole ice by a Soviet expedition of 1937 is seen by Cooper as "the abandonment of the sector theory and a reliance upon the principles of effective occupation as the basis of territorial sovereignty." (34)

Mr. Cooper's assumption is unfounded. The unsuccessful Soviet attempt to establish a permanent base for radio and meteorological service on drift ice near the Pole serves as evidence of the fact that the Moskva government realizes the flimsy foundation of the sector theory, and tries to support its sovereignty rights by effective occupation. This, in Moscow means the abandonment of the sector theory.

III. Airspace

The report of 21 October 1953 describes the direct relation of the question of sovereignty over the airspace to sovereignty over the seas. It was said that sovereignty of the airspace above territorial waters and closed seas belongs to the state which exercises sovereignty over the shores and the seas. Thus, according to the Soviet government and Soviet writers, complete sovereignty over the airspace above the Arctic seas (since they

32 "Mezhdunarodnoye Pravo" (International Law), Moskva, 1951, p. 309.

33 Hazard, J. N., "Law and Social Change in the USSR," London, 1953, p. 284.

34 Cooper, John C., "Airspace Rights over the Arctic," "Air Affairs," 1950, No. 3, p. 532.

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are declared closed seas) and over the rest of the Arctic Ocean, in the Soviet sector, belongs to the Soviet Union. We have tried to show that international law does not accept this theory, that solely sector claims exist, and that these claims (presented by the Soviet Union only), are not acknowledged by other states. Together with the sector theory also collapses the assertion of closed seas in the Arctic, as well as sovereignty of the airspace above them.

It must be stressed that if the sector theory were applied to the Arctic, it would be a handicap for aviation and transportation, since complicated agreements would have to be contracted with the sector owners. Particularly difficult would be the conclusion of an agreement with the Soviet Union. She shuns all international conventions on air transportation (with the single exception of the Warsaw Convention of 1929). From the point of view of the law of nations, the Arctic, as far as it is not effectively occupied, and its airspace, are free for all nations.

Böhmert correctly interpreted the purpose of the sector theory when he wrote that the sector theory and the inclusion of the Arctic seas in the category of closed seas, had the purpose of creating a legal basis for the imperialistic claims of the Soviets in the Arctic. (35)

It must not be forgotten that the Soviet Union has gone beyond the simple presentation of claims of sovereignty in the Arctic. She has made a declaration of taking possession as expressed in the Soviet Law of 15 April 1926. The consequences are obvious: the Soviet Union has arrogated the right to exclude every other power from navigation in the airspace above the Soviet Arctic sector, and on the four Arctic seas, on the ground of its alleged sovereignty over that sector, as defined in the Law of 15 April 1926, and over the four Arctic seas (the last in the limits of the Soviet sector). This claim will be made on the occasion and in time chosen by the Soviet Union. Taracouzio is right when summarizing the international significance of Soviet claims on the Arctic, he declares: "By having advanced the sector theory, the Soviets have placed in jeopardy a number of principles now in force in international law, and by so doing, they have rendered international action urgent, if collision between nations, on legal grounds, is to be averted,....politically their activity in the north is suggestive of a ...demonstrative manifestation of international law, so as to make it fit their immediate needs." (36)

It is evident that international action is necessary to forestall Soviet claims that their possession of the Arctic sector is based on the legal title of unobjected custom.

<sup>35</sup> "Böhmert, op cit., p. 279.

<sup>36</sup> Taracouzio, op. cit., p. 366.

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The direct reaction of the United States government to the notification of the Law of 15 April 1926 is not known here. However, the United States did express their opinion on the sector principle. In 1929 a suggestion was made to President Hoover that he initiate an international arrangement to partition the Arctic between the United States, Canada, Denmark, Norway, and the USSR. The Secretary of the Navy took position in the matter on 23 September 1929, as follows:

- a) "Is an effort arbitrarily to divide up a large part of a world's area among several countries;
- b) "Contains no justification for claiming sovereignty over large areas of the world's surface;
- c) "Violates the long recognized custom of establishing sovereignty over territories by right of discovery;
- d) "Is in fact a claim for sovereignty over high seas, which are universally recognized as free to all nations, and is a novel attempt to create artificially a closed sea and thereby infringe the rights of all nations for the free use of this area."

The Secretary of the Navy concluded: "I, therefore, consider that this government should not enter into any such agreement." (37)

D. H. Miller has considered the application of the Monroe Doctrine to the Arctic, (38) but rejected this suggestion, since the geographical extent of the Doctrine has never been delimited. President Monroe spoke of "American continents." It must be assumed that the Arctic is beyond the continents of America.

The Norwegian government answered the notification of the Law of 15 April 1926 by a note of 19 December 1928. According to Smedal, all necessary reservations with regard to the sector principle have been made by the Norwegian government (39)

Furthermore, the Norwegian government expressly disapproves the sector theory in its note recognizing Canada's sovereignty over the Sverdrup Islands. It was said in this note that the recognition of Canada's sovereignty over these islands "is in no way based on any sanction whatever of what is named 'sector principle.'" (40) Thus the sector theory was never accepted

<sup>37</sup>Hackworth, "Digest of International Law," 1940, Vol. I, p. 464.

<sup>38</sup>Miller, D. H., "Foreign Affairs," 1925, No. 1, p. 51.

<sup>39</sup>Smedal, op. cit., p. 106.

<sup>40</sup>Hackworth, op. cit., p. 463.

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as part of international law, whether by agreement or otherwise. The general law of discovery, notification, and effective occupation regulates the acquisition of land in the Arctic, as elsewhere. The Arctic Ocean and its seas are free for navigation of every country.

One hundred and fifty years ago Justice Story formulated the freedom of the seas in the following unforgettable words:

"Upon the ocean, then in time of peace, all possess an entire equality. It is the common highway of all, appropriated to the use of all; and no one can vindicate to himself a superior or exclusive prerogative there. Every ship sails there with the unquestionable right of pursuing her own lawful business without interruption; but, whatever may be that business, she is bound to pursue it in such a manner as not to violate the rights of others." (41)

The airspace over the Arctic Ocean and its seas must be as free for aircraft of every nation as the ocean itself, and its seas for international navigation. It is evident that navigation on the Arctic Ocean and the Arctic seas as well as in the airspace over them (the last beyond territorial waters) cannot be inhibited by any single state. International law is based on the general consent. The Permanent Court of International Law emphasizing the principle that international law governs relations between independent states, held:

"The rules of law binding upon states therefore emanate from their own free will as expressed in conventions or by usage generally accepted as expressing principles of law and established in order to regulate the relations between these coexisting independent communities or with a view to the achievement of common aims." (42)

Thus, actions appropriating sovereignty in a way not generally accepted are arbitrary and are the expression of pure imperialism.

It is characteristic of Soviet opportunism that claiming the application of the sector theory in the Arctic, the Soviet rejects the same principle for the Antarctic. The reason is, of course, evident: the Soviet Union cannot claim a sector in the Antarctic and oppose the use of this principle if others may profit by it.

This opportunistic position corresponds to the general concept of international law by the Soviet government and Soviet jurists.

41 "The Marianna Flora," (1826), 11 Wheaton (24 U.S.) I, p. 42; Cooper, op. cit., p. 537.

42 "The S. S. Lotus Case" (France vs. Turkey), "Permanent Court of International Justice, Judgment #9, 7 September 1921, Ser. A., No. 10, p. 18.

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As Professor Lissitzyn puts it: "The basic Soviet conception of international law is ...intensely practical. International law is accepted to the extent that it serves the interests of the Soviet State. It is an instrument of policy." (43)

IV. Territorial Water Belt

The question of the territorial water belt is tightly bound to sovereignty over airspace. Indeed, according to international law, there is no "right of innocent passage," for air ships above territorial waters.

Since 1921 the Soviet Union has arbitrarily claimed jurisdiction over a territorial water belt of twelve miles, in contradistinction to the three mile belt established by international law, and applied by other nations.(44) Although the 12 mile belt has never been acknowledged by international law, the use of it by the Soviet Union remains unopposed. The same will be true for the sector theory, if international measures are not taken. On the map attached to this report and published in Moskva in 1954, the Soviet Arctic sector is entered as a part of the Soviet Union. (45)

The Five-Year-Plan for 1951-55 contains several references to the economic development of the Soviet Arctic. It is stated there that work is to begin on a railway line from Krasnoyarsk to Yeniseysk; the sea ports of Murmansk and Nar'yan-Mar (at the mouth of the Pechora River) are to be enlarged and reconstructed; and the inland waterway port of Rechora (at the point where the Vorkuta railway crosses the Pechora River) had to be developed.

It is urged that "the backwardness of river transport in the basins of the rivers of Siberia should be liquidated, and its role in carrying goods to the regions of the Far North should be enlarged." In addition "an increase of freight turnover was planned for the Northern Sea Route, up to the point at which it will secure an uninterrupted supply to the population of undertakings and building construction to the Arctic and the Far North; it was also planned to augment the merchant fleet with new ice-breakers and to promote wide development of freight turnover in the Lena basin." (46)

<sup>43</sup>Lissitsyn, O. J., "Recent Soviet Literature of International Law," "The American Slavic and East-European Review," 1952, No.4, pp. 262-263.

<sup>44</sup>Decree of 24 May 1921, "Collection of USSR Laws," 1921, Art. 259; Decree of 15 June 1927--1927,625; Decree of 25 Sept 1935--1935, 420.

<sup>45</sup>"Atlas Mira" (World Atlas). Published by the Chief Administration of Geodesy and Cartography of the MVD of the USSR. Map No. 9, 10, of Physical Geography.

<sup>46</sup>"Pravda," 20 August and 10 October 1952; "The Polar Record," Vol. 6, July 1953, No. 46, p. 829.

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The whaling industry has been greatly expanded by the Soviets in the Arctic after World War II. The industry continued during the major part of the Second World War and production increased slightly. After 1945 there was a large expansion when the USSR annexed Kuril'skiye Ostrova (Kurile Islands) from the Japanese. Five -- presumably former Japanese -- land stations have been maintained in these islands with ten, later thirteen, catchers. The earliest available figures are for 1948, but the industry may have started a year or two earlier. The catch, predominantly Sperm Whales, rose from 460 in 1948 to 1687 in 1951, and oil production during this period rose from 19,072 barrels (3242 m tons) to 40,062 (6811 m tons). At the same time, the Kamchatka whaling fleet -- to which another catcher was added after the war, making a total of four -- has increased its catch to almost double the prewar average. In 1951 the combined total for Kamchatka and Kuril'skiye Ostrova were 2583 whales (of which some 2000 were Sperm) and 72,712 barrels (12,361 m tons) of oil." (47)

47 "The Polar Record," Vol. 7, No. 48, July 1954, p. 198.

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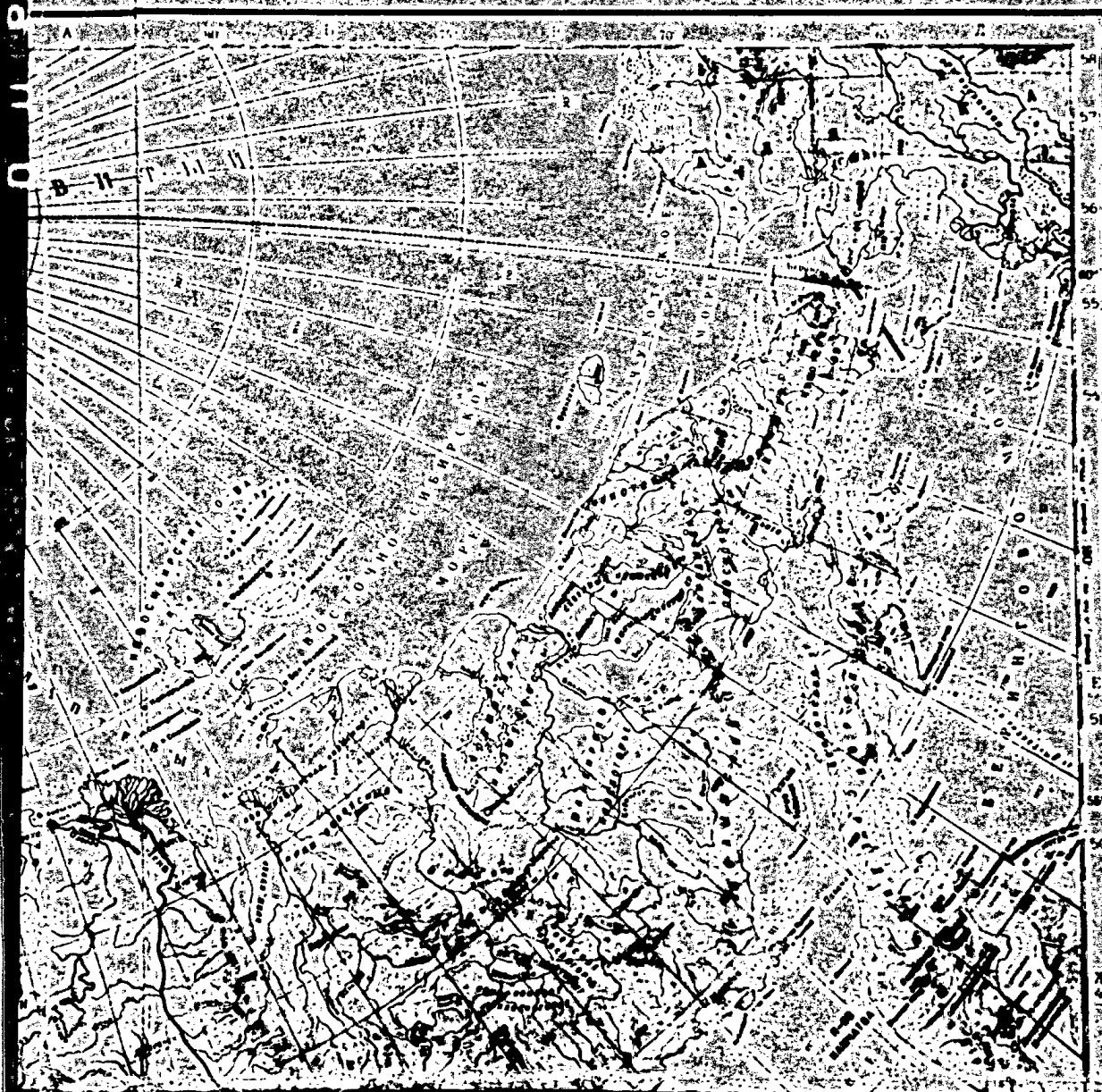
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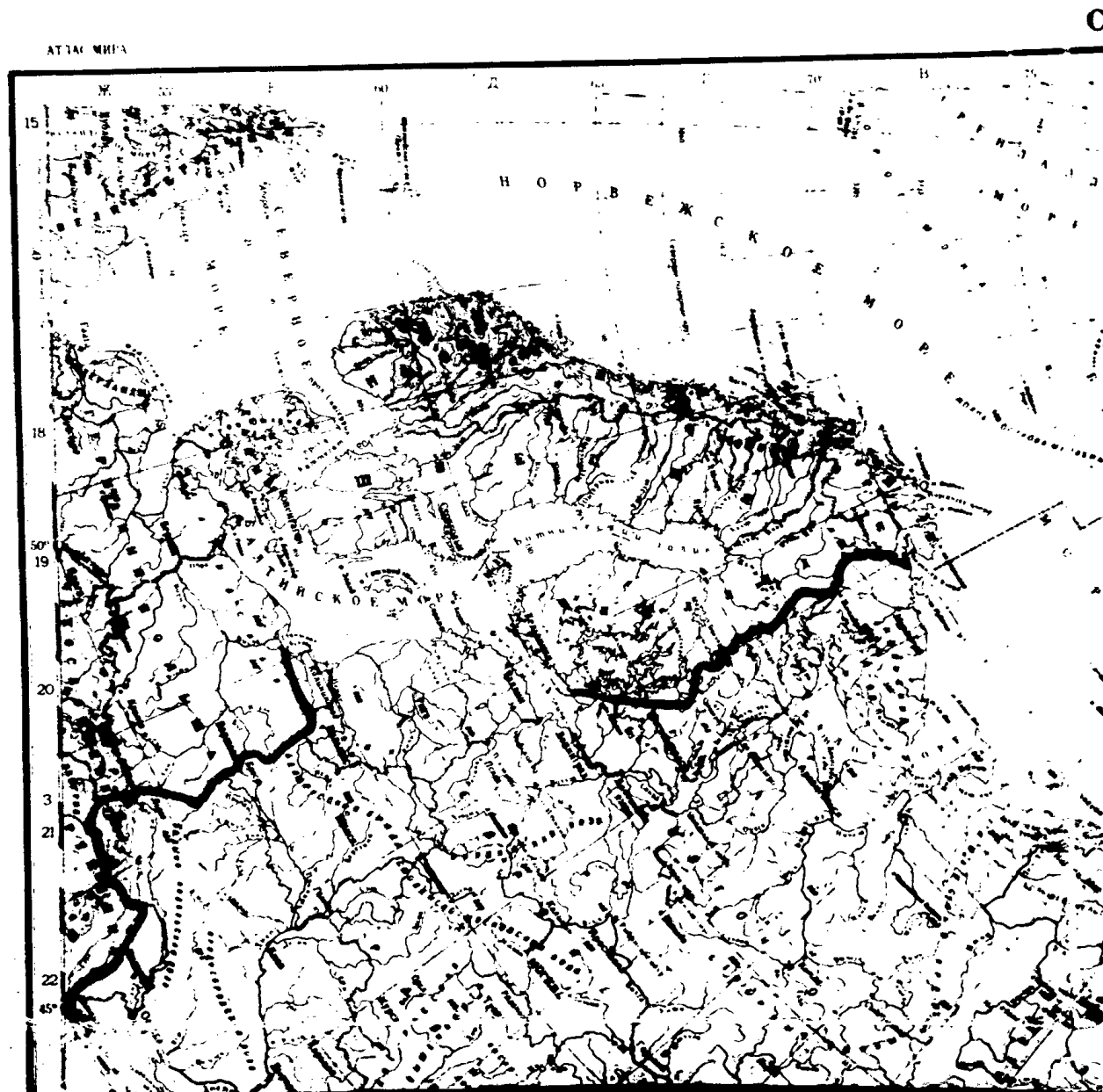
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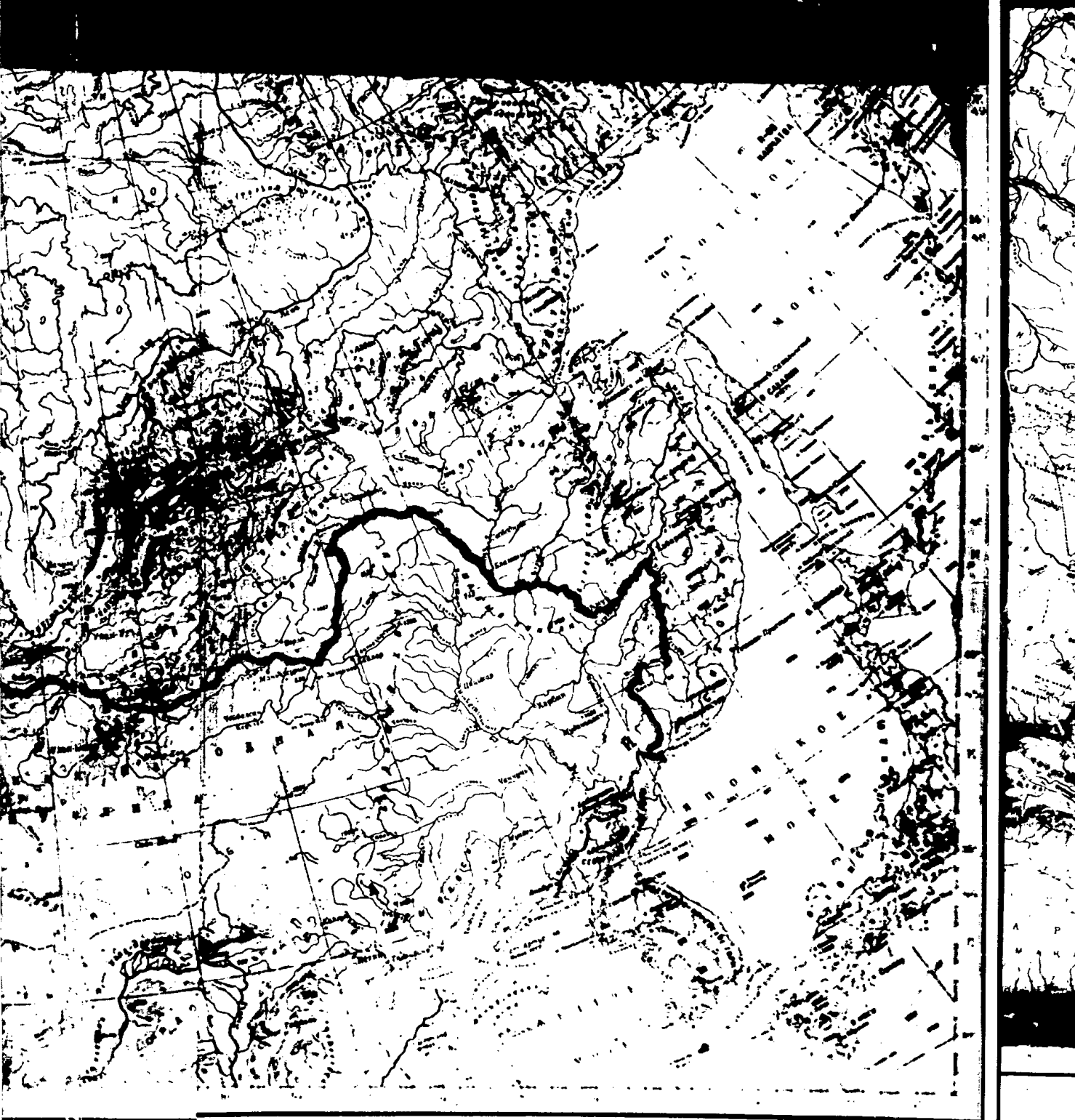




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